

~~ARTICLE APPEARED~~
~~E 22~~NEW YORK TIMES
6 January 1985

Letters

Free Press Is Vital
For a Free Society

To the Editor:

With Generals Westmoreland and Sharon suing for libel and the C.I.A. complaining to the F.C.C. about the fairness of A.B.C., the constitutional rights of the press are coming under the heaviest attack in recent history.

Although the Supreme Court has ruled that "public figures" may not recover for libel unless malice or reckless disregard for truth is proved, the difference between recklessness and negligence can be slight, and the determination is generally a question for a jury. Hence the long, expensive trials taking place in New York.

It is my hope that when these cases reach the Supreme Court, it will, insofar as "public officials" are concerned, adopt the dissents of Justices Black and Douglas and rule that there is an absolute privilege on the part of the press to be free from libel suits from this class of persons.

If such rule were formulated, the difficult issue remaining would be to define the term "public official." As a matter of policy, this class should consist of those persons who have some access to the media to refute accusations. I would urge the inclusion of elected officials, those receiving appointment from the President or a chief executive officer of a geographical subdivision (state, county, city, etc.) and top military officers. The exemption of the press from liability would be limited to items relating to the person's official functions.

Although strong arguments have been made that reckless untruths published about public officials should result in liability, the protection of a free press in a free society is so vital that the chilling effect of libel litigation must be removed for this class of persons.

EDWARD H. LEHNER

New York, Dec. 28, 1984

The writer is a judge of the Civil Court of the City of New York